IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8625 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

==========

GUJARAT AGRICULTURAL UNIVERSITY - Petitioner(s)
Versus
PRABHAT KALUBHAI CHAVDA - Respondent(s)

==========

Appearance :
Shri D. G. Chauhan for Petitioner(s).
Shri Anshin H. Desai for Respondent(s).

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/07/2007

ORAL JUDGMENT

The petitioners, being aggrieved by the judgement and

award dated 29th March, 2000 passed by the learned Presiding Officer, Labour Court, Junagadh in Reference (LCJ) No.51 of 1995, are before this Court.

2. Shri D.G. Chauhan, learned Counsel for the petitioners, submits that the learned Labour Court was unjustified in directing reinstatement with full back-wages without appreciating that the workman did not work 240 days in twelve calendar months preceding the date of the illegal retrenchment. Placing reliance upon Annexure-A (Exh.14 before the Labour Court), he submits that in the period between April-1993 to March-1994, the workman had hardly worked for 113 days and under the circumstances, the learned Labour Court could not direct reinstatement with full back-wages.

3. Shri Anshin H. Desai, learned Counsel for the respondent, however, submits that the question was oath against oath and if the petitioners did not produce the muster rolls, then, they had to suffer the adverse order.

4. Taking into consideration the totality of the circumstances and the law laid down by the Apex Court that burden is cast upon the workman to prove that he had worked for 240 days in twelve calendar months preceding the date of retrenchment, I am of the considered

opinion that the matter must go back to the Labour Court with liberty to the parties to produce further evidence in the matter.

5. The award passed by the learned Labour Court is hereby set aside and the matter is remanded back to the learned Labour Court for a final decision in accordance with law. If the respondent makes an application to summon the muster rolls to prove that he had worked for 240 days, then, the Court shall grant such application and direct the petitioners to produce the muster rolls. Even otherwise the petitioners would be free to examine some record-keeper or witness and may produce the muster rolls to show their fairness against the workman.

6. The parties present in the Court shall appear before the learned Labour Court on 13th August, 2007 and shall file a copy of this order before the learned Labour Court to enable it to know as to what it is required to do. The learned Labour Court shall decide the matter finally within six months from the date of the appearance of the parties.

7. In the result, the petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**